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Analysis of Senate Bill 1515 and House Bill 4938

Topic: Unlicensed Practice of Architecture, Engineering, and Surveying

Sponsor: Senator Sanborn

Representative Farrah

Co-Sponsors: Representatives Marleau, Ward, and Sak

Committee: Senate Economic Development & Regulatory Reform

House Commerce

Date Introduced: June 19, 2007

Date Enrolled: December 3, 2008 (Senate Bill 1515)
December 9, 2008 (House Bill 4938) (tentative)

Date of Analysis: December 5, 2008

Position: The Department of Labor & Economic Growth supports the bills.

Problem/Background: The penalties in the Occupational Code for practicing a profession without a license are not sufficient to deter unlicensed activity. The Department of Labor & Economic Growth has also found that the current penalties are often not sufficiently severe to interest a local prosecutor in taking such cases. When the department receives complaints of unlicensed activity, there are no administrative sanctions available as there would be in a case where an individual has a license that can be revoked or suspended. The department often can do little more than send the individual a letter stating that an allegation of unlicensed activity has been made and asking that the activity cease.

Description of Bill: House Bill 1515 amends the Occupational Code to provide for more stringent penalties for unlicensed activity in the design professions. The penalty for unlicensed practice of architecture, engineering, or surveying would be increased from the current misdemeanor, \$500 fine, and 90 days in jail to a reportable misdemeanor. A first offense would be punishable by a fine of not less than \$5,000 or more than \$25,000 or imprisonment for not more than 93 days, or both. A second or subsequent offense would be punishable by a fine of not more than \$5,000 or more than \$25,000 or imprisonment for not more than 1 year, or both. If an offense causes death or serious injury it is defined as a felony and is punishable by a fine of not less than \$5,000 or more than \$25,000 or imprisonment for not more than 4 years, or both. Any prosecution under the act is required to include restitution. Collection of compensation for the performance of licensed services without alleging and proving that the person was licensed is prohibited. A person who has utilized the services of an unlicensed person may bring an action, or offer as a counterclaim to an action brought by the unlicensed person, for a refund of

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compensation after the value of retained goods or services is deducted. Immediate effect was defeated on the Senate floor.

House Bill 4938 amends the Code of Criminal Procedure to reflect the more stringent penalties provided in Senate Bill 1515. The bill is tie-barred to Senate Bill 1515.

Summary of Arguments

Pro: New tools are needed to deal with unlicensed practice of a profession. The current penalties in the Occupational Code are little better than a slap in the hand. The department has effective tools available to deal with licensed individuals. The threat of revoking or suspending a license is a significant deterrent to violations of the law, but no similar administrative remedies are available when an individual has no license.

The unlicensed practice of architecture or engineering poses a real threat of harm to the public. Use of a bogus seal or misuse of a seal may result in unsafe buildings and structures being erected.

Con: Unlike the efforts of the real estate and accounting professions to deal with unlicensed activity, this proposal does not provide financial resources for the department to investigate and enforce prohibitions of unlicensed activity.

Fiscal/Economic Impact

(a) Department

Budgetary: The bills will have no budgetary impact on the department.

Revenue: The bills will have no impact on revenues.

Comments:

(b) State

Budgetary: The bills will have no budgetary impact on state government.

Revenue: The bills will have no impact on state revenues.

Comments:

(c) Local Government

Comments: The proponents of these bills hope that they will provide an incentive for county prosecutors to take an interest in investigating and prosecuting unlicensed activity.

Other State Departments: The Department of Labor & Economic Growth worked with the Department of Corrections to develop alternative language for the proposed felony penalties in the bill.

Any Other Pertinent Information: None.

Administrative Rules Impact: No new or revised administrative rules will be required if these bills become law.